

HOUSE BILL NO. 208

INTRODUCED BY C. HARRIS, BRANAE, CLANCY, DAVIES, EGGERS, R. ERICKSON, GILLAN, JENT,
LASLOVICH, NEWMAN, K. PETERSON, SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CONTEMPT OF COURT PROCEDURE; CLARIFYING
THE MEANING OF CIVIL AND CRIMINAL CONTEMPT; PROVIDING FOR DUE PROCESS IN CONTEMPT
PROCEEDINGS AS REQUIRED BY MONTANA SUPREME COURT OPINIONS; AMENDING SECTIONS
3-1-501, 3-1-511, 3-1-513, 3-1-518, 3-1-520, 3-10-402, AND 3-11-303, MCA; AND REPEALING
SECTIONS 3-1-519, 3-10-403, AND 3-10-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-501, MCA, is amended to read:

"3-1-501. What acts or omissions are contempts -- civil and criminal contempt. (1) The following
acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the
authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending
to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due
course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk,
sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special
proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as ~~such~~ that individual
without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process
of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning

1 from the court where the action is on the calendar for trial;

2 (i) any other unlawful interference with the process or proceedings of a court;

3 (j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

4 (k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly
5 conversing with a party to an action to be tried at the court or with any other person in relation to the
6 merits of the action or receiving a communication from a party or other person in respect to it without
7 immediately disclosing the ~~same~~ communication to the court;

8 (l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process
9 of a superior court or proceeding in an action or special proceeding contrary to law after the action or
10 special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

11 (2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the
12 authority of the officer.

13 (3) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks
14 to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in
15 imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the
16 court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can
17 end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor
18 cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in
19 imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall
20 impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

21 (4) A person may be found guilty of and penalized for criminal contempt only under 3-1-511 or
22 45-7-309. Proof BY PROOF beyond a reasonable doubt is required, and the. The procedures provided in Title
23 46 apply ONLY TO CRIMINAL CONTEMPT PROSECUTIONS UNDER 45-7-309, EXCEPT THOSE UNDER 3-1-511."

24
25 **Section 2.** Section 3-1-511, MCA, is amended to read:

26 **"3-1-511. Procedure -- contempt committed in the presence of the court.** When a contempt is
27 committed in the immediate view and presence of the court or judge at chambers; and the contemptuous
28 conduct requires immediate action in order to protect the judicial institution and vindicate the authority of
29 the court RESTORE ORDER, MAINTAIN THE DIGNITY OR AUTHORITY OF THE COURT, OR PREVENT DELAY, it may be
30 punished summarily; ~~for which an~~ An order must be made reciting the facts ~~as occurring~~ that occurred

1 in ~~such~~ the judge's immediate view and presence and adjudging that the person proceeded against is
2 ~~thereby~~ guilty of a contempt and that ~~he~~ the person must be punished as ~~therein~~ prescribed in the order.
3 An order may not be issued unless the person proceeded against has been informed of the contempt and
4 given an opportunity to defend or explain the person's conduct. A person may not be adjudged guilty of
5 and penalized for criminal contempt under this section BY A FINE IN AN AMOUNT NOT TO EXCEED \$500 OR BY
6 IMPRISONMENT FOR A TERM NOT TO EXCEED 30 DAYS, OR BOTH, AND BY ANY OTHER REASONABLE CONDITIONS OR
7 RESTRICTIONS THAT THE COURT MAY CONSIDER APPROPRIATE UNDER THE CIRCUMSTANCES."

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9 **Section 3.** Section 3-1-513, MCA, is amended to read:

10 **"3-1-513. Warrant of attachment or commitment -- statement of charge.** When the contempt is
11 not committed in the immediate view and presence of the court or judge, a warrant ~~of attachment~~ may
12 be issued to bring the person charged to the court to answer ~~or, without a previous arrest, a warrant of~~
13 ~~commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment~~
14 ~~can be issued without such previous attachment to answer or notice or order to show cause~~ the charge.
15 The warrant must be accompanied by an adequate and specific statement of the charge. The answer to
16 the charge must be followed by a hearing under 3-1-518."

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18 **Section 4.** Section 3-1-518, MCA, is amended to read:

19 **"3-1-518. Hearing on contempt not committed in immediate view and presence of court or judge**
20 **at chambers.** (1) When ~~the a~~ person arrested for a contempt not committed in the immediate view and
21 presence of the court or judge at chambers has been brought up or appeared, the court or judge ~~must~~ shall
22 proceed to investigate the charge, ~~must hear~~ shall schedule and hold a hearing on any answer ~~which that~~
23 the person arrested may make to the ~~same~~ charge, and may examine witnesses for or against ~~him~~ the
24 person, for which an adjournment may be had from time to time, if necessary. The judge investigating the
25 charge and scheduling and presiding over the hearing may not be the judge against whom the contempt
26 was allegedly committed, EXCEPT THAT IF THE CONTEMPT AROSE FROM THE VIOLATION OF AN ORDER OF THE COURT
27 ISSUED AFTER A HEARING ON THE MERITS OF THE SUBJECT OF THE ORDER, THE JUDGE WHO ISSUED THE ORDER MAY PUNISH
28 THE CONTEMPT OR COMPEL COMPLIANCE WITH THE ORDER UNLESS IT IS SHOWN THAT THE JUDGE WOULD NOT BE
29 IMPARTIAL IN ADDRESSING THE CONTEMPT.

30 (2) The charged person must be given a reasonable opportunity to obtain counsel and prepare a

1 defense or explanation prior to the hearing. The charged person may testify and call witnesses at the
2 hearing."

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4 **Section 5.** Section 3-1-520, MCA, is amended to read:

5 **"3-1-520. ~~Imprisonment~~ Penalty to compel performance.** When the sanction imposed for a
6 contempt consists in the omission to seeks to compel the contemnor to perform an act which that is yet
7 in the power of the person contemnor to perform, he the contemnor may be imprisoned incarcerated,
8 subjected to a fine in an amount not to exceed \$500, or both, until he shall have performed it the
9 contemnor has performed the act. In that case, the The act must be specified in the warrant of
10 commitment."

11

12 **Section 6.** Section 3-10-402, MCA, is amended to read:

13 **"3-10-402. ~~Proceedings -- contempt committed in presence of court.~~** When a contempt is
14 committed, whether or not it is in the immediate view and presence of the justice, it may be punished
15 summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the
16 person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed the
17 procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523
18 apply."

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20 **Section 7.** Section 3-11-303, MCA, is amended to read:

21 **"3-11-303. ~~Contempts a city judge may punish for --procedure.~~** (1) A city judge may punish for
22 contempt persons guilty of only the following acts ~~and no other~~:

23 ~~(1)(a)~~ (a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court
24 tending to interrupt the due course of a trial or other judicial proceeding;

25 ~~(2)(b)~~ (b) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the
26 judge or in the immediate vicinity of the court held by ~~him~~ the judge tending to interrupt the due course
27 of a trial or other judicial proceeding;

28 ~~(3)(c)~~ (c) disobedience or resistance to the execution of a lawful order or process made or issued by
29 the judge;

30 ~~(4)(d)~~ (d) disobedience to a subpoena ~~duy~~ served or refusal to be sworn or to answer as a witness;

1 ~~(5)(e)~~ rescuing any person or property in the custody of an officer by virtue of an order or process
2 of the court.

3 (2) The procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520
4 through 3-1-523 apply."

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6 NEW SECTION. **Section 8. Repealer.** Sections 3-1-519, 3-10-403, and 3-10-404, MCA, are
7 repealed.

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